IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated: Nainital the May 29th day of June 2005
Criminal Misc. Bail Application No. 295 of 2005
Order on the bail application of accused

CRIMINAL SIDE

Padam S/o Rafal
R/o village Karanpur
P.S. Khanpur
District Haridwar ..….Applicant

Versus

State of Uttaranchal …..Opposite Party

AND

Criminal Misc. Bail Application No. 298 of 2005
Order on the bail application of accused

CRIMINAL SIDE

Satish S/o Tej Ram
R/o village Karanpur
P.S. Khanpur
District Haridwar ……Applicant

Versus

State of Uttaranchal ……Opposite Party

Arising out of case crime No.58/2004
U/s 147, 148, 149, 504, 506, 302, 34 I.P.C.
P.S. Khanpur
District Haridwar

Hon'ble J. C. S. Rawat, J.

Heard Sri S. P. S. Panwar learned counsel for the applicants and learned A.G.A. for the State.

Perused the record. According to the prosecution version, Samshad and Babu were going to have the purchases for Eid and after these purchases from Gordhanpur all were coming back to their village. The complainant sat on a tractor alongwith Tahir and Furkan. Whereas, Samshad and pillion rider Babu were going ahead to this tractor. When they reached in front of Gordhanpur School, accused persons Satish Padam armed with revolver, Rajkumar armed with countrymade pistol and Sant Ram, Adesh and Sonu were standing with two motorcycles. When Samshad reached there all surrounded him. Then, Padam and Satish fired upon Samshad & Babu, while

Rajkumar filed with his C.M.P. Consequently thereupon, Samshad and Babu succumbed to their injuries at the spot. The learned counsel for the applicant contended that the theory of the prosecution is doubtful as the police later on developed a different theory and two other accused Pawan and Suresh Pal were implicated. The learned counsel for the applicants further contended that new accused persons namely Pawan and Suresh Pal approached this Court through a writ petition No.1270/04(M/B), in which their arrest was stayed. Since, the chargesheet has been filed, hence it has been infructuous.

The learned counsel for the applicants further contended that due to the enmity the present applicants were implicated. The learned A.G.A. refuted the contentions and contended that the accused Surendra disclosed the name of Pawan, Suresh Pal and Pushpendra as assailants of the deceased. It was further contended that Pushpendra was encountered by the police. So, the investigation was initiated against Pawan Kumar and Suresh Pal. Furkan-eye witness has stated in his evidence that five or six persons, who were standing inside the wall of school, were stating that Samshad was murdered by them. This fact was not proved by the evidence. Statements of Maksood and Tahir also corroborate the allegations made in the FIR. The present applicants are the main assailants of the deceased. Considering the facts, totality and circumstances of the case, I do not find any good ground for granting the bail.

Therefore, the bail application is hereby rejected.

(J.C.S. Rawat, J.)

Dated 29.6.2005

LSR